Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

CASE NO: _____

In The
Supreme Court of the United States

Frank M. Coelho,- Petitioner

v.

City of Angels Camp, et al. ;
Richard Matranga, City Counsel;

Respondent's

On Petition For Writ Of Certiorari
UNITED STATES COURT OF APPEALS
For The District Of Columbia
Washington D. C. 20001-2866

PETITION FOR WRIT OF CERTIORARI

Frank M. Coelho
P.O. Box 1031
Altaville, California 95221
(209) 736-0289

QUESTION(S) PRESENTED

1. Has a dangerous precedent been set in the instant case by the lower courts , with the regard to right to petition government engaging in an organized enterprise with the City of Angels Camp, et al., to defeat the rights of the petitioner and citizens of the united States of America whereby the scheme goes like this; in the interest of the economy the city attorney will simply remain silent knowing the court will work in the municipalities favor by refusing to issue a default-"Judgement" for which the petitioner won fair and square?

2. Has a "fire wall" been created under Federal Rules of Civil Procedure clearly making two distinct categories for the clerks function under Rule's 45(b), and 55(a), and if amount certain is readily ccmputable by affidavit, (already submitted at the original filing and numerous times afterwards), is the judge barred from interference in CLERKS ADMINISTERIAL DUTY under Rule 45(b) , 55(a). when the prevailing party requested judgement entered?

3. If an amount certain is readily computable and a judge interferes with the clerks ADMINISTERIAL DUTY under 45(b), and 55(a),

should not mandamus lie to stop the ursurption of judge from penetrating the "fire wall" or impenetrateable barrier created the rules regarding default judgement and petitioners judgement be issued by the court?

4. Does the converting of a mandamus to an appeal making the City of Angels Camp, et al., Appellee's, when they clearly failed to respond, the 180 days having run, and does the District Court, show lack of Judicial Scholarship of the Justices in the Court of Appeals and is the Petitioner For some unknown reason have lesser rights or no access to the Courts?, a clear violation of the First Amendment?

5. Can a Appeals Court of Law, make an Order, then "ignore the same", close a case and remove it from the Court docket?

6. Is there Appellee(s) in this erred matter, AND IF SO, whom would it be?

7. Why would the Docket, on AUGUST 26, 2002, show MANDAMUS "ISSUED", to clerk, District Court, and petitioner have to submit a Writ of Certiorari ?

LIST OF THE PARTIES

[X] All parties **do not** appear in the caption of this case on the cover page. A list of all the parties to the proceeding in the court whose judgement is subject of this petition is as follows: **"APPELLEE'S?"**

[Mr. Richard Matranga, City Counsel]
[Mr. Timothy Shearer, City Admin.]
[Mr. Olen Murphy, City Code Insp.]
[Mr. Thomas Spence, City Police.]
[P.O. Box 667]
[Angels Camp, California 95222]

[City Of Angels Police Dept,]
[Mr. Thomas Spence,]
[City Police Sargeant]
[200 Monte Verda]
[Angels Camp, California 95221]

United States District Court
[Judge: Emmett G. Sullivan]
333 Constitution Avenue N.W.
Washington, D.C. 20001

United States Court of Appeals
[In Banc:]
Edwards, Randolph, Garland
333 Costotution Avenue N. W.
Washington, D. C. 20001-2866

TABLE OF CONTENTS

	PAGE(S)
QUESTION'S PRESENTED:.....	ii-ii
LIST OF PARTIES:.....	iii
TABLE OF CONTENTS:.....	iv
INDEX and APPENDICES:.....	v
ORDER OF APPEALS COURT...	1-4
ORDER OF DISTRICT COURT..	5
TABLE OF AUTHORITIES:.....	6
STATUTES and RULES OTHER:.....	7
OPINIONS BELOW:.....	8
JURISDICTION:.....	9
CONSTITUTION and STATUTORY:.....	10-11
STATEMENT OF CASE:.....	12-16
REASONS FOR GRANTING PETITION:.....	17
AMPLIFIED REASONING:.....	18-22
CONCLUSION:.....	23

INDEX AND APPENDICES

APPENDIX [A] Petitioner seeks review of United States Federal Court of Appeals DECISION, Filed April 19, 2002, THEN IGNORED! Denied Petition for Rehearing!

APPENDIX [B] Petitioner seeks REVIEW of United States Federal Court of Appeals, decision to DENY petitioners Right to have Judgement entered on the record., on Writ of Mandamus, Rule 55(a). NOT 55(b).

APPENDIX [C] Petitioners seeks Review of the District Court decision to enter "DEFAULT ONLY", and NOT JUDGEMENT ON THE RECORD.

APPENDIX [D] Exhibits, originals and copies of Judges Orders, from "both" the Court of Appeals, and the District Court, with proof of affidavits, AMOUNT CERTAIN.

APPENDICE "A"

United States Court of Appeals
For The District of Columbia Circuit

No. 02-7015 September Term, 2001
01-cv00495

Filed On: APR 19 2002

Frank Manuel Coelho,
Appellant

v.

City of Angels Camp, et al.,
Appellees

Before: Edwards, Randolph, and Garland, Circuit Judges

ORDER

Upon consideration of the petition for writ of mandate, which is construed as a petition for writ of mandamus, and the notice of appeal, it is

ORDERED that the petition for writ of mandamus be denied. Although there was an entry of default by the district court clerk on June 28, 2001, the entry of a default judgement is not automatic. Coelho must move for entry of judgement by default. Rule 55(b) of the Federal Rules of Civil Procedures Gives Coelho two options to pursue a default judgement. If Coelho were to submit an

affidavit, claiming a "sum certain or ... a sum which can by computation be made certain, " the district court clerk could enter a default

judgement. Rule 55(b)(1); see Enron Oil Corp. v. Diakuhara, 10 F.3d 90, 95 (2d Cir. 1993). In "all other cases" (i.e., where there is not a sum certain), Coelho would need to apply to the court for a default judgement, and the district court would have to decide whether to enter a default judgement. Rule 55(b)(2).

Because Coelho has not complied with the requirements of Rule 55(b) for obtaining a default judgement, and because he must do so before being entitled to a default judgement, he is not entitled to the extraordnary relief requested. See Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980) (per curiam) (mandamus is an extraordinary remedy and will be granted only when the petitioner cannot obtain relief by invoking an adequate, ordinary remedy). It is

FURTHER ORDERED, on the court's own motion, that Coelho show cause, within thirty days of the date of this order, why this appeal should not be dismissed for lack of final order, or in the alternative, if the district court's order filed November 9, 2001 is final, then why the order shoul;d not be summarily affirmed. The response to the order to show cause may not exceed 20 pages. Failure to comply with this order will result in dissmissal of the appeal for lack of prosecution. See D.C. Cir. Rule 38.

The Clerk is directed to send a copy of

this order to appellant both by certified mail, return receipt requested, and by first class mail.

Per Curiam

APPENDICE "B"

United States Court of Appeals
For The District of Columbia Circuit

No. 02-7015 September Term, 2001
01cv00495

Filed On: APR 19 2002

Frank Manuel Coelho,
Appellant

v.

City of Angels Camp, et al.,
Appellees

BEFORE: Edwards, Randolph, and Garland, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing filed June 27, 2002, it is

ORDERED that the petition be denied.

Per Ciriam

FOR THE COURT:
Mark J. Langer, Clerk

BY: Michael C. McGrail
Deputy Clerk

APPENDICE "C"

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Frank Manuel Coelho	)	
	)	
Plaintiff,	)	Civil Action No.
	)	01-495 (EGS)
v.	)	
	)	FILED
City of Angels Camp,	)	Nov. 9, 2001
et al.	)	
Defendants	)	
	)	

ORDER

It is this eighth day of November, 2001, hereby

ORDERED that in view of the entry of a default by the Clerk of the Court on June 26, 2001, this case is **REMOVED** from the active calendar of the Court without prejudice to further proceedings as may be appropriate by plaintiff to obtain judgement against the defendants.

11/8/01
DATE

Emmett G. Sullivan
United States District
Judge

Notice to:
Frank Manuel Coelho
P.O. Box 1031
Altaville, CA 95221

TABLE OF AUTHORITIES

Constitution First Amendment.

U.S. v. Wills 389 U.S.@ 95

C.J.S., Appeal and Error, Sub.Sections 1395-1407, 1453-1834

Am.Jur.2d, Appeal and Error, Sub.Sections 678-683,702-977

Modification, Spaulding v. Cameron (1952) 38 Cal2d 265, 270, 239 P2d 625

Chas. L. Harney, Inc. v. State of California (1963) 217 Cal App2d 77,86, 31 Cal Rptr 524

Federal Rule of Civil Proceedures 55(a), Res Judicata.

Cunningham v. Simpson (1969) 1 Cal3d 301,306,81 Cal Rptr 855,461 P2d 39;

Boyle v. Hawkins (1969) 71 Cal2d 229, 235, 78 Cal Rptr 161, 455 P2d 97;

Foreman & Clark Corp. v. Fallon (1971) Cal2d 875, 881,92 Cal Rptr 162, 479 P2d 362

STATUTES AND RULES

Rule 201.(b)(2)(f) F.R.A.P. II Judicial Notice of adjudicated facts, Res Judicata

F.R.E.P. Rule 103(2)(b)(d) Article I- Error

Cal Rules of Ct, Rule 12(b), (c), correction and proper certification of the record.

Rule: 55(a) "amount Certain"

Rule: 55(b) "Right to Respond"

Rule: 45(b) "Clerks Duty"

OTHER:

First Amendment of the United States Constitution.

F.R.C.P. 55(a)

Violations of "Clerks Duty" 45(b)

Violation, changing mandamus from Res Judicata under 55(a) to 55(b) Appeal

43 CFR 3714.3 Patented Mining Claims

In The
SUPREME COURT OF THE
UNITED STATES

Petition for Writ of Certiorari Petitioner respectfully prays that a Writ of Certiorari issue to review the Judgement below,

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is
[X] is unpublished

[X] The opinion of the United States district court appears in Appendix B to the petition and is
[X] is unpublished

JURISDICTION

[X] The date on which the United States Court of Appeals decided my case was August 8th, 2002

[X] A timely petition for rehearing was denied by the United States Court of Appeals, August 8, 2002. A copy of the order denying rehearing appears in Appendix [A]

[X] No requests for extensions were applied for by this petitioner.

The jurisdiction of this Court is invoked under Title 28 U.S.C.Sub. Section 1254(1).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

First Amendment of the United States Constitution: Right to Petition, and deprevation of Right.

U.S. v. Wills 389 U.S. @ 95.

Modification to 55(b) Spaulding v Cameron (1952) 38 Cal2d 264, 270, 239 P2d 625.

In Virginia v. Rives, 100 U.S. 313, at page 323, Mr. Justice Strong, speaking for the Court in reference to Writ of Mandamus, which the Supreme Court might issue, Stated as follows:

". . . .in what case such a writ is warranted by principles and usage of law it is not always easy to determine. Its use has been very much extended in modern times, and now it might be said to be a established remedy to oblige inferior courts and magistrates to do that justice which they are in duty, and by virtue of their office, bound to do so. It does not lie to control judicial discretion, except when the discretion has been abused; but it is a remedy when the case is outside of the exercise of this discetion, and outside the jurisdiction of the court or officer to which or to whom the writ is addressed. . . ."

3] of Title 28 U.S.C. Section 2072 Petitioner demand for Amount Certain, accordingly to the title the petitioner was entitled to ($10,000.) ten thousand dollars per day, and petitioner charged ($1,000.) One thousand dollars, a day as the amount certain.

Federal Constitution, The Mining Act of 1872; Petitioner owns a Patent to his property, 43 CFR 3714.3 applies.

STATEMENT OF THE CASE

The First Amendment, gives a Right of a citizen to petition, and the City of Angels Camp, California entering into a organized enterprise with the Courts, remaining silent, spending no judicial capital, knowing that the Court will forsake the petitioner or any ordinary citizen rights, can easily be deprived of his/their right to petition, by this elaborate scheme.

Petitioner owns a federal patent to his property.

Petitioner had a fire burn his home to the ground, The City placed multiple demands on the petitioner causing deprevation of Civil Rights, violations of patent laws, demands of extortion, issuance of citation, without a judge and oath and affirmation, (warrant), under police power and color of law, by the City of Angels Camp, California in which the controversies arise in this matter. Petitioner attempted to settle the controversies numerous times, prior to filing an administrative process.

On January 18, 2000, petitioner filed a administrative procedure, upon the City of Angels Camp, California, et al.

Klais v, Danowski, 337 Mich. R. (1964),

concerning jurisdiction of "patent Lands". On December 06, 200 "0", petitioner served all parties with Notice of Fault, No response was had from any party, except, a citation was issued, November 07, 2000, to petitioner to pay an extortion fee by the City, Timothy Shearer, and Olen Murphy, enforced by City Police Officer, Thomas Spence.
On December 12, 200 "0", petitioner receiving no response filed a Notice of Default, on all parties to this matter, again no response was had.

On January 18, 200 "1", petitioner recorded said administrative judgement and proceeded to prevail in judgement thereof.

On March 06, 2001, Summons and Complaint were properly filed with the District Court of Columbia, Summons issued, served properly and timely on all defendant's, Case No: CV-00495. All filings and submissions by petitioner were by "Affidavits". AFTER THE 180 DAY RESPONSE PERIOD HAD RUN, and defendants and each of them were barred from interference, A request of the Court by petitioner was made by affidavit, to enter the default and subsequent judgement, (the defendants being barred, time having expired for objection).

A 'DEFAULT ONLY' WAS THEN ENTERED UPON THE RECORD, BUT NOT A JUDGEMENT, the petitioner inquired of the Court, "WHAT WAS GOING ON?", a inquiry was sent to the Chief Administrative Clerks Office, (inquiry dated August 14, 2001.), NO RESPONSE WAS GIVEN!, On August 14, 200 "1", Petitioner prepared an Order, in the interest of saving court time and efforts, for default judgement to be entered on the record, on June 26, 2001, via the Pacer. Petitioner waited an extraordinary time period to see if the Court would "do its duty", the Clerk and his administerial duty should have,

and by the Rules 45(b), upon timely request made by affidavit to the Court entered the Judgement, however such was not the case, the Judge therein, interfered with the admisterial duty of the clerk, and made an "Order Removing ,closing the Matter, entering default ONLY, and not the judgement, with prejudice, sending the same to petitioner.

On November 20, 2001, the petitioner received said order from Judge: Emmett G. Sullivan, of the District Court.

Immediately, petitioner objected to the interference in this instant matter, in preventing the Clerk from doing his administerial duty, and entry of the judgement. The petitioner believes the court acted in perfidy, breach of trust and faith in the proper civil right to the judgement, utilizing an abuse of discetion. The petitioner then submitted an objection, believing this citizen has a right to entry of the judgement, "NO Response was had to petitioners inquiries.

Notwithstanding the clerks administerial duty, Rule 45(b) petitioner filed, under 55(a), Res Judicata, a Writ of Mandate, during this process to the Appeals Court, "PETITIONERS CASE

WAS CHANGED FROM A 55(a) MATTER TO A 55(b)-'APPEAL', making the defendants,(whom were dead), rise up again, making them "APPELLEE(S)"?, written across the face sheet of petitioners filing was the words, "SUPPLEMENT TO WRIT OF MANDAMUS?"

The petitioners case was 55(a) from the beginning and never was 55(b), an error of the court. Petitioner then cited: 46 AMJUR 2d Sub.Sec. 320, as well as State ex rel, Medlock v. Love Shop, Ltd. (App) 286 SC486, 334 SE2d 528.

Petitioner believes, that by law, and a right, he is entitled to the issuance of the default judgement, on the record of the court.

"The Writ should issue".

REASONS FOR GRANTING THE PETITION

1. The Constitution First Amendment, right to petition, and depreviation thereof.

2. The Conclusion, and judgement order from the Appeals Court Washington D. C. , "was in err, as facts based on an a FILING BY PETITIONER OF AN APPEAL UNDER RULE "55(b), WHEN IN FACT THE MATTER WAS FILED FROM THE VERY BEGINNING UNDER RULE "55(a)", and was Res Judicata.

3. Petitioners case is a PATENT case, and petitioner was deprived of a lawful right to entry of judgement, at the appeals level for review. the court erred in its decision, and petitioners believes the writ should issue and an Order for judgement to be entered on the record.

4. Having discovered the court error, and that by the evidence, amount certain "affidavits", having been on the record, the Appeals Court should have granted the petitioners request, per appeals court own "order" of April 19, 2002.

5. The Writ of Certiorari should issue.

AMPLIFIED REASONING

Petitioner owns the federal patent to the land on which the controversies arise in this case, to wit:

The City of Angels Camp, has harassed and maintained an attitude, Since 1993, petitioner's home was destroyed by fire, during the cold, ice weather, the City mandated, petitioner have the area cleaned up!, petitioner, even during the cold wet weather, complied with City Requests. Newly appointed, City Administrator: Timothy Shearer, demanded at a meeting in his City Offices, that either we clean up petitioners property, after a fire in (7) days, or requested petitioner pay ($7,500.00) by the following Monday, or the city would be at petitioners expense, clear the property with bulldozers to get it done. Petitioner refused to pay , and stated that he would request a City Counsel Hearing, and in the mean-time would continue cleaning up the site. Mr. Shearer then made the statement to petitioner fiancee, "I don't want you and your kind in my City". Petitioners fiancee is the sister of Ellena (Ellie) Nesler,the woman who shot a Molester in a Court Room in Jamestown California, for molestation of her 6 year old child.

Petitioner was cited by City Government Officials, enforced by police power, demanded to pay a fine, for not responding to city code(s) and ordinances, City of Angels Camp. Petitioner's business was interrupted without notice, and under color of law, walk-in, by city code enforcement, and police officer, serving petitioner a citation and letter of demands, or else!

Petitioner filed an administrative suit for damages, a request to correct un-lawful due process, et seq. Petitioners suit was a 55(a) filing, charging defendant's and each of them with multiple violations of law, served all parties, no answer was had, no response was made by defendant's and each of them, notice of fault was served upon all parties, subsequent a "default was served on all parties, a request for amount certain, 1,000.00 dollars a day was the minimum, by law , petitioner was entitled to 10,000.00 per day, petitioner used the minimum, an administerial process was filed by affidavit under Rule 55(a) with the District Court in Washington, D. C. ignoring the same, for an un-usual length of time, then the Court issued an order that the "Default was entered on the record", however the judgement was not! The petitioner requested the entry thereof, and the court closed, removed petitioners case from the docket.

Petitioner filed a "Writ of Mandamus", and further, inquired why the clerk had failed in his administerial duty to enter judgement on the record, as after requested, by the prevailing party would be the normal process!, no response was had, instead Peitioners case was, in ink written on the face sheet and "changed from Mandamus, 55(a) to an appeal, a 55(b) filing?

Since none of the defendants responded to petitioners jurisdictional challenge of their authority to regulate him and his patented claim, then none of the defendants should be allowed to raise any claim or defense now against their actions in regards to their jurisdiction to regulate petitioner, time having run, defendants and each of them are and were BARRED, from further entry in the matter.

None of the defendants can assert authority to zone or regulate petitioners claim because the lawful location and subdivision of petitioners claim relates back to, and petitioners vested rights in petitioners patent which occurred before California Subdivision Map Act of 1893.

If defendants can somehow lawfully possess some right under the city, codes, ordinance or zoning laws to regulate petitioners patented property,

then defendants are without authority here to require petitioner to pay an extortion fee to do their bid, since petitioner has a vested property right in a lawful pre-existing non-conforming use giving petitioner a vested property right to mine on his patented claim.

Defendants had evidence in their files during the time of the events of this case in the form of a professional report done on petitioners property during 1993 to 2001 entitled "Matinez, Coelho files showing that there has been considerable wrong doings on petitioners property as well as family.

Petitioner also contends that all the defendants knew or should have known that they were without authority to regulate, fine and make demands on petitioners patented property under city zoning ordinance and have denied petitioner his rights guaranteed to him under his patent or his federally protected liberty interests to be free from the arbitrary admininstrative proceedings which the city and its officials has proceeded under, or both.

The district court basically ignored the special status of patented claims: The rights of a claim go back to the date of location, which make new laws on the

claims ex-post facto, that there is like a 9th and 10th amendment lock under 43 CFR 3714.3 where reservations cannot be added on or subtracted on a patented claim protected under the provisions of public law 167, which preserves the rights of patented mining as a savings clause. That encumbrance, covenant and restrictions not within the reservation of the Patent are barred. That the judiciary was aware of the earth and safety zealots and evil bureaucrats who could make the mineral within the boundaries worthless through erroneous and excessive regulations and sought to protect said patented claims in Saint Louis Refining v. Kemp. Further that the administrative record showed there was no lawful reason for citing and harassment, robing petitioner of peace, quite and enjoyment, a basic right of real property ownership. The City, et al., respondent(s)/defendant(s) had no legal basis, for their collective actions against petitioner and his family.

CONCLUSION

WHEREFORE petitioner prays for relief to the honorable justice's, (in banc), and request "the judgement be entered on the record", and this writ be affirmed.

Dated:_____

Respectfully submitted

Frank M. Coelho, Petitioner